

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT**

CHANDIGARH

CWP No. 14107 of 2011

Date of Decision: 09.01.2012

H.C.Arora ...Petitioner Versus

State of Punjab and others ..Respondents.

**CORAM: HON'BLE MR. JUSTICE RANJAN GOGOI,
CHIEF JUSTICE HON'BLE MR. JUSTICE MAHESH
GROVER**

Present :

Mr. H.C.Arora, petitioner in person.

**Mr. R.K.S.Brar, Addl. Advocate General, Haryana.
Mr. A.S.Grewal, Addl. Advocate General, Punjab.**

RANJAN GOGOI, C.J.(Oral)

Heard Shri Arora, appearing in person, Shri A.R.Talwar, Principal Secretary to Government of Punjab, Department of Information & Technology and Shri A.S.Grewal, Addl. Advocate General, Punjab.

With the consent of the parties and in view of the issues involved, the Court has considered it appropriate to dispose of this Public Interest Litigation at this stage.

The petitioner seeks the Court's interference for framing of Rules under Section 27 of the Right to Information Act, 2005 (for short 'the Act') to regulate the filling up of vacant posts of State Information Commissioners in the State of Punjab. According to the petitioner, the persons who are to fill up such posts are hand picked and consequently deserving persons are left out of the zone of consideration thereby harming public interest. The petitioner has impleaded the respondents No. 3 and 4 who are presently working as CWP No. 14107 of 2011 [2] State Information Commissioners so as to illustrate the arguments advanced. Respondents No. 3 and 4, according to the petitioner, have been so appointed by a process of pick and choose and not by an open and transparent process in which all the willing and eligible persons were informed of the availability of the vacancies in question. It is in the aforesaid broad premise that the petitioner contends that framing of Rules containing well laid down norms will ensure certainty in public appointments and participation of able, eligible, qualified and eminent persons in the Commission.

Having regard to the importance of the issue and also for the reasons outlined in our previous order dated 04.01.2012 we have thought it appropriate to require the presence of the Principal Secretary of the Department of Information & Technology in Court today. The Principal Secretary, Shri Talwar, has responded well to the request of the Court and has offered abundant assistance to the Court in the matter. So has the Addl. Advocate General, Punjab, Shri Grewal. A combined consideration of the stand taken on behalf of the respondents by Shri Talwar and Shri Grewal is that the State of Punjab has decided to follow the principles of law applicable to filling up of vacancies in the Punjab Public Service Commission as laid down in the judgment dated 17.8.2011 of this Court in Civil Writ Petition No. 11846 of 2011 (Salil Sabhlok V. Union of India and others).

It has been submitted that though the aforesaid order is pending in appeal before the Apex Court, the Government has decided to constitute a Search Team to fill up the posts of the State CWP No. 14107 of 2011 [3] Information Commissioners and infact a team consisting of the Chief Secretary of the State, Shri Talwar himself as the Principal Secretary of the Department and a retired Lieutenant General of the Indian Army has been

constituted to undertake the subsequent exercises. In the course of such an exercise, information was put on the website that the State of Punjab is desirous of filling up 4 posts of State Information Commissioners. In response thereto, 109 number of applications were received and 12 candidates, in order of merit, were shortlisted by the Search Committee, out of which four persons have been selected by the committee contemplated by Section 15 of the Act.

We have given our anxious consideration to the matter. Whether Rules should be framed under Section 27 of the Act or not is a matter of discretion to be exercised by the appropriate authority of the State Government and there ought to be no writ directing the State of Punjab to so act. However, taking into account the fact that every State is committed to work for the welfare of its citizens and that Rules which lay down the norms provide for an orderly conduct of government business and also provide certainty in public life, it is necessary for the State Government to consider whether in the present case the power to frame Rules under Section 27 of the Act should be exercised or not. In doing so, the State Government will definitely keep in mind that even in the absence of Rules, certain norms as stated before the Court and reproduced in the present order are prevailing which norms have been culled out by the State Government from the judicial pronouncements of the Courts. In such a situation, CWP No. 14107 of 2011 [4] the Rules, if framed, would only provide for an orderly conduct of business with a high degree of certainty and accuracy. The Right to Information Act, 2005 is a vital piece of legislation prompted to provide a good and responsible governance to the citizens. The Act has proved to be an effective means of obtaining governmental information(s) as would be evident from the scores of applications and requests that are received by different authorities under the Act thereby ensuring an alert, responsive and responsible Government.

Viewed from the aforesaid perspective it would be the bounden duty of the State to examine whether the norms that are being followed today in the matter of appointment of State Information Commissioners as well as certain additional norms that the State Government may consider appropriate should find place in the form of a set of Rules or not. Such an

exercise should be performed by the State so as to ensure fairness in procedure and certainty in public life. Beyond the above we do not consider any direction or observation to be justified in the facts and circumstances of the case.

The Public Interest Litigation shall stand disposed of in terms of our directions and observations and by requiring the State of Punjab to act accordingly without any delay.

(RANJAN GOGOI)

CHIEF JUSTICE

09.01.2012 (MAHESH GROVER) 'ravinder' JUDGE